Filed 7/24/19 In re C.B. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.B. et al., Persons Coming Under the Juvenile Court Law.	B293310 (Los Angeles County Super. Ct. No. 18CCJP03637)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JESSICA T., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Juvenile Court Referee. Affirmed.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant Jessica T. (Mother) is the mother of three children: three-year-old I.T. and five-year-old twins Ca.B. and Ce.B. (collectively, the Minors).[1] The juvenile court assumed dependency jurisdiction over the Minors based, among other things, on Mother's physical abuse of Ce.B. (a scratch on her face that left a scar) and marijuana use by Mother and the Minors' father. The court removed the Minors from Mother's custody and placed them with a non-related extended family member. We consider whether substantial evidence supports the juvenile court's jurisdiction findings and removal orders. We also consider whether the court erred by failing to give certain advisements to Mother at the conclusion of the disposition hearing.

I. BACKGROUND

A. Circumstances Leading to Los Angeles County Department of Children and Family Services (Department) Intervention

In May 2018, the Los Angeles Police Department received a report that Mother was emotionally abusing and neglecting the Minors by drinking excessively, smoking marijuana in front of them, and hitting her boyfriend Anthony in their presence. An officer interviewed Mother; she admitted smoking marijuana (she said she had a "marijuana card") but denied drinking alcohol. Mother told the officer she would smoke marijuana across the parking lot from her apartment and leave the door open so she could still see the Minors. She also stated she hides the marijuana in a container only she can reach.

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[1] These were the Minors' ages at the time the dependency proceedings commenced.

The police officer interviewed the Minors and I.T. denied being a victim of any abuse, said Mother does not drink or smoke, and said he is not allowed to play video games when he misbehaves. Ca.B. and Ce.B. denied being victims of any abuse, stated Mother and Anthony "'only argue,'" and denied seeing Mother smoke.

Approximately a week later, on May 22, 2018, the Department received a referral alleging Anthony was physically abusing the Minors by hitting them with an open hand, squeezing their arms, pinching them, and pulling on their hair. The referral further alleged the Minors were always hungry, Mother was failing to protect them from Anthony's abuse, and Mother would leave the Minors alone without supervision when she went to the market across the street. Shortly after the Department began investigating this referral, it received another referral alleging I.T. was abused by Anthony, in Mother's presence, when Anthony picked I.T. up by the arms and walked him around the room as a form of discipline. The caller further alleged Mother often smoked marijuana and drove with the children in her car while under the influence.

B. The Department's Preliminary Investigation

As part of its initial investigation, the Department interviewed Mother. She reported she previously lived with Anthony and the Minors at a motel but they were now living out of a car. Mother admitted she and Anthony would smoke marijuana when the Minors were asleep and she told the interviewing social worker she was able to buy the marijuana by saving money. Mother denied anyone physically harmed the Minors and claimed they had never gone hungry. The social

worker provided Mother with information regarding a shelter that accepted mothers and children. Mother stated she did not want to seek housing at the shelter because she had a boyfriend (Anthony) and wanted to continue to live with him.

The social worker also interviewed Anthony. He characterized himself as the disciplinarian for the Minors. He admitted he used to pinch the children and hit their bottoms, but he said he did not do so any longer. He also admitted he smoked marijuana with Mother when the Minors were asleep, either in the morning or at night.

The social worker also spoke to several other people who had contact with the family. The office manager at the motel where they previously lived reported he saw the Minors "often," they were "fine," and "looked okay." An employee at a housing-related organization working with the family reported Mother was one of their most difficult clients, had remained in the program for longer than the average amount of time, and had been staying in motels for 12 months without making efforts to find housing. The employee was concerned for the family because the children lacked a stable environment and Mother had disclosed she was using marijuana to deal with stress and depression. Employees at another housing-related organization who worked with the family similarly stated Mother had not been actively searching for housing or doing anything to help her situation. They expressed concern that Mother was just smoking marijuana and "'doing nothing.'"

After initial interviews, a Department social worker made an unannounced visit to the crisis shelter where Mother and the Minors were staying. The social worker informed Mother of the allegations in the second referral, which Mother denied. Mother

said marijuana was the only drug she used and she did not use it on a daily basis. The social worker also asked Mother and Anthony to submit to on-demand drug tests, which they did. Mother and Anthony tested positive for cannabinoids, and Anthony also tested positive for alcohol.

A Department social worker also spoke with the Minors' father and paternal grandmother. The father reported he had not seen the Minors in two years. He claimed Mother had abused him and he said he wanted to see his children. During the interview, the father appeared to be under the influence, admitted to smoking marijuana, and stated he was using a hard drug but declined to say which one. The social worker asked the father to submit to a drug test the same day, but the father declined, stating he would not have enough time to "'get clean.'" The Minors' paternal grandmother reported the father was "'a bad dad'" who does not pay rent, does not work, and does not see his children.

Around the same time, a pediatrician evaluated the Minors. According to the pediatrician, the Minors were "malnourished" and had "extremely low" body mass indices—with one of the twins (Ce.B.) as low as two percent. The pediatrician believed the Minors were developmentally delayed and needed therapy for trauma because of their unstable living environment.

The Department obtained a removal order and detained the Minors on June 4, 2018. When they did so, Department social workers noticed Ce.B. had a mark on the left side of her face. According to the Department's reporting, when asked about the mark Ce.B. said, "'[M]ommy! Nails! My face!'" Ce.B. also made a claw gesture with one hand and said, "'[M]ommy no candy! NAIL!'"

C. The Dependency Petition and Subsequent Proceedings

The Department filed a seven-count dependency petition alleging jurisdiction was proper under Welfare and Institutions Code section 300, subdivisions (a), (b)(1), and (j).[2] Counts a-1, b-1, and j-1 alleged Mother physically abused Ce.B. by scratching her face with her nails and leaving a mark (nonaccidentally, as alleged in the a-1 count), and that this abuse gave rise to a risk of serious physical harm to Ce.B. and her siblings. Counts b-3 and b-4 alleged that Mother and the Minors' father were users of marijuana, which rendered them unable to provide the Minors, who were of such a young age that they required constant care and supervision, with adequate care. The remaining counts (b-2 and b-5) alleged Mother failed to protect the Minors from Anthony's abusive discipline and his marijuana use.

The juvenile court ordered the Minors detained and they had a follow-up visit with a pediatrician approximately three weeks after being removed from Mother's custody. Ca.B. was underweight and exhibiting food hoarding behaviors; her foster mother reported she was constantly hungry, talking about food, and asking for food. Ce.B. was hyperactive, her speech was delayed, and she was at the bottom of the normal weight range. I.T. was hyperactive, did not speak in understandable sentences, had an insatiable appetite, and was preoccupied with food.

By July 2018, Mother and Anthony were living with the Minors' maternal grandmother. Mother's visits with the Minors were monitored, and were largely positive. In August 2018, Mother requested her next visit with the Minors take place at a

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[2] Undesignated statutory references that follow are to the Welfare and Institutions Code.

family celebration at which Anthony would be present. When the Department social worker stated it was not appropriate for Anthony to be present at the visits given the allegations of abuse against him, Mother became very upset.

In advance of the jurisdiction hearing, the Department re-interviewed Mother and others familiar with the case. It submitted reports to the juvenile court providing the following additional information regarding the allegations in the petition.

1. Mother's abuse of Ce.B. (counts a-1, b-1, and j-1)

Mother told a Department social worker she had accidentally scratched Ce.B. on her face. As Mother explained it, she was calling the Minors to go for a walk, Ce.B. thought Mother was playing and was not listening, and Ce.B. went into the shelter's kitchen, where children were not allowed. Mother, who had something on her hand, tried to grab Ce.B. and accidentally scratched her. Mother stated the scratch peeled Ce.B.'s skin "'a little'" but Ce.B. did not cry.

When speaking to others, Mother gave conflicting accounts of what happened. The director of the preschool the Minors were attending at the time reported Mother told her Ce.B. had been accidentally scratched when the children were cleaning each other's faces. The Minors' maternal grandmother said Mother told her she accidentally scratched Ce.B. while making something to eat.

Ce.B.—who had a scar on her face when interviewed on June 20, 2018, which was approximately two to three weeks after the scratching incident—said Mother scratched her purposely out of anger, not accidentally. As recounted by the Department,

Ce.B. said: "'Mommy scratched me right here. There was an open candy [bag] at . . . [Anthony's] cousin's house. There was a piñata. I got a candy bag. I ate the candy and my mommy was mad. Then she scratched me because I ate the candy.'" Ce.B. also said "'yes'" when asked if she was afraid of Mother.

2. Mother's drug use (count b-3)

When asked about her marijuana usage, Mother admitted she "'would be under the influence'" or "'have some in [her] system.'" Specifically, she said she "'would smoke [marijuana] and it would help [her] be active with [her] kids.'" Mother also stated marijuana helped her focus, be more outgoing, and be more interactive.

Mother reported her marijuana use began roughly six months earlier, after her doctor recommended it to treat her minor scoliosis. Mother stated she would "'smoke a bowl'" if she woke up with pain, she would "'roll a blunt and smoke it'" during the Minors' naptime, and she would "'smoke the rest of it'" at night. Mother said she smoked marijuana outside the motel while the Minors were inside but she "'always kept an eye on them through the window.'" Mother told the social worker that she was no longer using marijuana because she did not want that to be the reason the Minors were not with her.

Mother was asked to submit to eight drug tests between the beginning of the Department's investigation in May 2018 and the disposition hearing in early October of the same year. Mother tested positive for cannabinoids in May 2018 and then failed to appear for a test in June. She tested positive on one occasion in July, negative on another that month, and she failed

to appear for a test in early August. Mother subsequently tested negative on three occasions from late August through September.

Mother enrolled in a drug treatment program in June 2018. As part of the program, Mother was required to attend a number of group meetings, attend individual counseling sessions, submit to random testing, and attend three weekly 12-step Narcotics Anonymous/Alcoholics Anonymous meetings to obtain a sponsor. In August, her counselor at the program reported Mother had good attendance and participation but noted she was concerned because Mother had made "very minimal progress" in the 12-step program and had not yet obtained a sponsor. In late September, the counselor reported Mother was doing "really well," had "really made a turn around," obtained a good sponsor, and been taking responsibility for her life and her actions.

3. The remaining allegations concerning the parents

The Department social worker was unable to interview the Minors' father but spoke to Mother about his drug use. Mother stated the father had "'always been a user.'" She also said the father was not present in the Minors' lives, did not visit much, and was under the influence when he did visit.

When asked about the allegation that she had created a detrimental and endangering home environment by allowing Anthony to reside in the home and have unlimited access to the Minors, Mother denied Anthony had an alcohol problem, explaining he "'drinks because he is accustomed to it,'" his family was a bad influence, and he was not currently drinking. Mother also reported Anthony told her he stopped smoking marijuana "'about a month ago.'"

D. Adjudication and Disposition

The juvenile court held an adjudication hearing and sustained all five counts alleged in the petition. The court later held a separate, contested disposition hearing at which Mother testified.

Mother testified she was attending parenting classes and had seen changes in both herself and the Minors. She was living with the Minors' maternal grandmother at a relative's home and the two were looking for an apartment. She had been enrolled in a drug program for four months. She had ended her relationship with Anthony, she claimed, because he could not defend himself in the case and she figured it was best to focus on getting her children back. Mother conceded, however, that Anthony still sent her text messages "here and there asking if everything's going good." Mother stated she was in individual therapy but the last session had been two or three weeks before the hearing.

On cross-examination, Mother maintained the allegations in the petition (which the juvenile court had already sustained) were untrue save the allegation that she smokes marijuana. She specifically disagreed with the suggestion she had neglected the Minors and instead testified they had always been underweight and their body mass indices were not a result of neglect.

The juvenile court found Mother's testimony not credible. The court opined Mother lacked insight, was not forthcoming, and was not honest. The court found keeping the Minors in the home of a parent would pose a substantial danger to their physical health, safety, protection, and emotional well-being. The court ordered family reunification services for Mother and the Minors' father and informed Mother it was very important for her to comply with the terms of the court-ordered case plan.

II. DISCUSSION

Mother asks us to reverse the juvenile court's jurisdiction findings on all counts. We conclude reversal is unwarranted because the record contains substantial evidence to support the court's assumption of jurisdiction based on Mother's physical abuse of Ce.B. and Mother's marijuana abuse. Because those sustained allegations provide a sufficient basis for jurisdiction, there is no need to discuss the other allegations. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).) We also affirm the juvenile court's disposition order removing the Minors from Mother's custody because Mother physically abused Ce.B. and continued to deny wrongdoing, Mother's progress in addressing her marijuana abuse was at best nascent at the time of the disposition hearing, and the juvenile court could reasonably believe alternatives short of removal would not be effective. Finally, we conclude that even if the juvenile court failed to provide Mother with certain notifications at the disposition hearing, any error was harmless.

A. Substantial Evidence Supports the Trial Court's Assumption of Jurisdiction

We review jurisdictional findings "'to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court [and] we review the record in the light most favorable to the court's determinations . . . .'" [Citations.]" (*In re R.T.* (2017) 3 Cal.5th 622, 633 (*R.T.*).)

"Although 'the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm' [citation], the court may nevertheless

consider past events when determining whether a child presently needs the juvenile court's protection. [Citations.] A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; see also *In re F.S.* (2016) 243 Cal.App.4th 799, 814-815.) A dependency court is not required to "wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child." (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 (*Christopher R.*).)

As we shall review in greater detail, the juvenile court relied on evidence that Mother intentionally scratched Ce.B. and abused marijuana in making its jurisdiction ruling. Analyzed individually, and certainly in combination, this was substantial evidence that warranted dependency jurisdiction.

1. Jurisdiction was proper under section 300, subdivision (a) based on Mother's nonaccidental abuse of Ce.B.

Section 300, subdivision (a) authorizes a juvenile court to exercise dependency jurisdiction over a child if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally . . . by the child's parent." (§ 300, subd. (a).)

Substantial evidence supports the juvenile court's finding that Mother's act of scratching Ce.B. constituted nonaccidental physical harm and that there was a substantial risk Ce.B. would suffer serious physical harm in the future. It is undisputed that Mother scratched Ce.B. on the left side of her face, near her eye. It is also undisputed that the scratch was significant enough that a scar was visible on Ce.B.'s face two to three weeks after the

injury. When asked what caused the scar, Ce.B. stated Mother scratched her because Mother was angry Ce.B. had eaten candy. This is sufficient to show Mother scratched Ce.B. hard enough to leave a scar and did so "nonaccidentally." Though Mother disputed this account and asserted the scratch was an accident, the juvenile court was entitled to believe Ce.B.'s account of what happened over Mother's varying descriptions. We will not second-guess the finding the court made. (*I.J.*, *supra*, 56 Cal.4th at p. 773 [""'We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court'""].)

Mother argues that even if she inflicted the scratch nonaccidentally, it still cannot constitute serious physical harm or a risk of the same under section 300, subdivision (a). She offers three reasons why, each of which we dispatch under settled law.

Mother argues the scratch was not "described by anyone as severe," noting the record does not reflect any medical attention was sought or any follow-up treatment necessary. Setting aside the problems inherent in evaluating the severity of the injury by considering whether Mother saw fit to seek medical attention for it, the argument runs contrary to pertinent case law.

Section 300, subdivision (a), does not define "'serious physical harm.'" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138 (*Isabella F.*).) Rather, it provides that "[f]or purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury." (§ 300, subd. (a).) Here, Mother scratched Ce.B. sometime between the Department social worker's unannounced visit to the family on May 30, 2018, and

the date on which the Minors were detained from Mother, June 4, 2018. Ce.B. had a one-inch scar on her face when she was interviewed two to three weeks after the injury. Ce.B.'s scar indicates her injury was serious enough to satisfy the section 300, subdivision (a) threshold. (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1472 [pinching child in anger that left visible impression on child's body for days supports finding of a substantial risk of serious, nonaccidental physical harm].)

Mother's reliance on *Isabella F.*, a case in which a mother inflicted small scratches on her daughter's face during a struggle over getting ready for school, is unavailing. The child in *Isabella F.* had scratches consistent with fingernail scratches and a gouge mark on her left earlobe, but those marks were observed the same day the injuries had been sustained. (*Isabella F.*, *supra*, 226 Cal.App.4th at pp. 131-132.) *Isabella F.* does not describe the injuries at issue as having caused permanent scarring or being otherwise visible weeks after they had been sustained. Here, in contrast, the scratch was significant enough that a scar was visible at least two weeks later. Second, though the mother in *Isabella F.* denied scratching her daughter, she admitted to spanking her, acknowledged she had not handled the matter in the best way, and took responsibility for the incident. Here, Mother acknowledged no wrongdoing, which is probative of a substantial risk of future harm.

Mother also argues the scratch and resulting scar do not constitute serious physical harm or a substantial risk of the same because "such a scratch can be viewed as a form of reasonable discipline." In our view, to state the proposition is to refute it. Raking a child across the face near her eye hard enough to cause scarring as punishment for eating candy was neither warranted

by the circumstances nor reasonable. (*In re D.M.* (2015) 242 Cal.App.4th 634, 641 ["Whether a parent's use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent's conduct is genuinely disciplinary; (2) whether the punishment is 'necess[ary]' (that is, whether the discipline was 'warranted by the circumstances'); and (3) 'whether the amount of punishment was reasonable or excessive'"].)

Mother finally argues the scratch is not sufficient to justify jurisdiction under subdivision (a) because it was not part of a pattern of abuse that would place the Minors at risk of future severe abuse. But section 300, subdivision (a) contains no such requirement. Rather, it provides jurisdiction may be asserted due to a substantial risk of serious physical harm "based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, *or* a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm." (§ 300, subd. (a), italics added.) Here, the manner in which Ce.B.'s injury was inflicted coupled with Mother's persistent failure to recognize her actions were inappropriate suffice to support the juvenile court's determination there was a risk Mother would inflict serious physical harm in the future.[3]

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[3] With an adequate evidentiary basis to find the section 300, subdivision (a) count true as to Ce.B., the juvenile court also had an adequate basis to assume jurisdiction over the other two siblings under section 300, subdivision (j). (*I.J.*, *supra*, 56 Cal.4th at p. 774 ["Subdivision (j) applies if (1) the child's sibling has been abused or neglected as defined in specified other subdivisions and

(See *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [recognizing "denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision"].)

2. Jurisdiction was proper under section 300, subdivision (b) based on Mother's drug abuse

Section 300 authorizes a juvenile court to assume dependency jurisdiction over a child when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ." (§ 300, subd. (b)(1); see also *R.T.*, *supra*, 3 Cal.5th at p. 629 [first clause of section 300, subdivision (b)(1) "requires no more than the parent's 'failure or inability . . . to adequately supervise or protect the child'"].)

While evidence of drug use is not alone sufficient to support jurisdiction under section 300, subdivision (b)(1) (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767 (*Drake M.*)), jurisdiction findings are properly sustained where, as here, there is substantial

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(2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. [¶] . . . [¶] 'The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance'"].)

evidence of drug use that poses a substantial risk to the safety of the user's children—particularly children of a young age. Here, there was substantial evidence Mother abused, not just used, marijuana.

A finding of substance abuse can be premised on a finding of "'recurrent substance use resulting in a failure to fulfill major role obligations at work . . . or home (e.g., . . . neglect of children or household).'" (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.) The record reflects Mother failed to fulfill her major role obligations of providing the Minors with suitable housing and ensuring they were adequately fed. Employees at organizations attempting to help the family obtain housing noted Mother had not made efforts to do so. The Minors were also malnourished when they first came to the Department's attention—with extremely low body mass indices, insatiable appetites, and food preoccupations once placed in foster care. At the same time, Mother was saving money to purchase marijuana and consistently denying that the children were ever hungry, or that there were any issues related to how they were eating under her care.

The record also reflects Mother had not been properly supervising the Minors. Mother admitted to regularly using marijuana over a period of at least six months, and she said she smoked marijuana up to three times per day: in the morning if she woke up in pain, during the Minors' naptime, and at night. Mother also effectively admitted to being under the influence while caring for the children, telling a Department social worker marijuana helped her be active with her children. There is no evidence another sober adult was regularly present to supervise

the Minors during these times.[4] Mother also stated she smoked marijuana outside, claiming she could see the Minors through either an open door or a window. Though this meant the Minors were not directly exposed to smoke, it also meant they were left without immediate supervision while Mother was outside smoking.

This evidence is all the more troubling when considering the Minors' young ages (three, five, and five). Ca.B., Ce.B., and I.T. were children of "tender years" who face "an inherent risk to their physical health and safety" if they are not adequately cared for or supervised. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219 [children six years old or younger are considered children of "'tender years'"].) Where such children are involved, a "finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767.)

Mother argues the contrary by claiming the Department did not identify any actual harm to the Minors. Actual harm, however, is not required for jurisdiction. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) To the extent Mother also argues there was no *risk* of harm to the Minors, the Minors' young ages bolstered by the evidence discussed above adequately supports the trial court's jurisdiction finding.

Mother also contends the court's assertion of jurisdiction was improper because she had ceased using marijuana by the

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[4] Anthony, the only other adult in the household, smoked with Mother when the Minors were asleep.

time of the jurisdiction hearing. From the commencement of the Department's investigation in May 2018 through the jurisdiction hearing in August of that year, Mother had been asked to submit to six drug tests. She tested positive for marijuana use on two, missed two (including one in August 2018), and tested negative on the remaining two occasions. That is not a record that provides solid assurance her marijuana use had abated even while under court and Department supervision. Indeed, even though Mother's most recent tests were negative, she still had not completed her substance abuse program. The juvenile court could rightly conclude Mother's efforts to achieve and maintain sobriety were insufficient at the time of the disposition hearing to demonstrate there was no longer a substantial risk of serious harm to the Minors.

B. Substantial Evidence Supports the Removal Order

Before removing a child from a parent's physical custody, a juvenile court must find clear and convincing evidence there is or would be "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor" if the child were returned home, and that there are no reasonable means to protect the child without removal. (§ 361, subd. (c)(1).) "A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 [focus of the statute is on averting harm to the child].) "'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]' [Citation.]" (*In re Miguel C.* (2011) 198

Cal.App.4th 965, 969.) A court evaluating the propriety of removal "may consider a parent's past conduct as well as present circumstances." (*In re N.M.* (2011) 197 Cal.App.4th 159, 170 (*N.M.*).)

We review a removal order for substantial evidence. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) Accordingly, "we review the evidence most favorably to the court's order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion." (*N.M.*, *supra*, 197 Cal.App.4th at p. 168.)

Mother contends that even if dependency jurisdiction was warranted, there is still insufficient evidence to support the juvenile court's decision to remove the Minors from her custody. She also contends there were reasonable measures short of removal that would have allowed the Minors to remain in her custody, such as orders requiring additional drug tests, unannounced home visits, continued participation in services, and no contact between Anthony and the Minors.

Substantial evidence supports the juvenile court's removal decision. Mother failed to take responsibility for her physical abuse of Ce.B., providing a false account of how the injury occurred and minimizing the seriousness of it. Additionally, the Minors were of tender years and Mother's marijuana use rendered her incapable of providing regular care and supervision. Though Mother had returned three negative drug tests in the weeks prior to the disposition hearing, her overall testing record was mixed and the negative results were close in time, especially compared with the extent of Mother's marijuana abuse. Further,

Mother did not recognize any problems with her past behavior: she claimed the Minors were not malnourished and instead had always been underweight and she made no connection between the Minors' malnourishment and her decision to use money to buy marijuana. This all justifies the court's decision to remove the Minors from Mother's custody and its finding that there were no reasonable alternatives to removal. (See *In re M.R.* (2017) 8 Cal.App.5th 101, 109 [parents' minimization and failure to accept responsibility supported jurisdiction]; *In re Maya L.* (2014) 232 Cal.App.4th 81, 104.)

C. Notifications at Disposition

Mother also argues the case should be remanded for new adjudication and disposition hearings because the court failed to provide two notifications Mother contends were required. Neither contention requires reversal.

First, Mother argues the juvenile court failed to provide the notification required by California Rules of Court, rule 5.695(h)(2). Rule 5.695(h)(2) provides that "[i]f a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court must: [¶] Notify the parents that their parental rights may be terminated if custody is not returned within 6 months of the dispositional hearing or within 12 months of the date the child is determined to have entered foster care, whichever time limit is applicable."[5] We cannot tell

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[5] The Department argues no such notice was required because section 361.5, subdivision (a)(3)(C), upon which Mother also relies, applies only in cases where the child was under three years of age on the date of initial removal from parental custody, and none of the Minors were under three years old at the time of

from the appellate record whether the trial court provided Mother with the Rule 5.695(h)(2) advisement either at the hearing or in writing following the hearing. But the report the Department submitted in advance of the jurisdiction hearing states a Department social worker met with Mother in July 2018 and "informed her of the legal timeframes for Family Reunification, Family Maintenance, Legal Guardianship and Adoption" as well as the Department's intent to "pursue a plan of permanency" if reunification services were terminated. A copy of this report was also mailed to Mother. We therefore deem any error harmless. (See *In re Albert B.* (1989) 215 Cal.App.3d 361, 379-380 [court's failure to notify parents of possibility of losing parental rights at review hearing was harmless error where parents had received adequate notice prior to the hearing].)

Second, Mother argues the juvenile court failed to advise her of her right to appeal the disposition order. California Rules of Court, rule 5.590(a) provides in pertinent part: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of: (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal . . . ." Again, neither the reporter's transcript or the minute order indicate any such advisement was given. However, Mother cannot have been

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their removal. No such age limitation, however, restricts the requirements imposed by Rule 5.695(h)(2).

prejudiced by the juvenile court's failure to provide this advisement because we have this appeal before us. Any error was again harmless.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.